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# JUSTICE BERYL JOYCE LEVINE: BEHIND THE SCENES

DAVID K. LEVINE

## I. INTRODUCTION

On January 2, 1996, Justice Levine formally announced her resignation from the North Dakota Supreme Court. In so doing, she told Governor Edward T. Schafer that "not a day has passed without my being reminded somehow that my mere presence on the court, without more, has served as an important symbol not only for girls and women but for all North Dakotans who believe our state provides opportunities beyond those shaped by traditional expectations."<sup>1</sup> Her comments to Governor Schafer epitomize the humble attitude she demonstrated throughout her tenure on the bench, and they also exemplify the energy, devotion, insight, and commitment she brought to the judiciary for eleven years. No doubt those who have had the privilege of working with, and in front of her have witnessed these qualities firsthand.

Justice Levine blazed new paths, not only for women who would follow her, but also for the men whom she would educate and who had yet to contemplate the notion that life is truly comprised of far more than traditional, and outdated, expectations. Perhaps for many, she serves as an inspiration and a special role model. For this writer, there is no question that she has taught me, indeed inspired me, to recognize that the world will be a better place when each of us recognizes that life is comprised of more than a one dimensional (i.e., male) perspective. It is with that thought in mind that I accept with great pride and honor the invitation of the *North Dakota Law Review* to contribute to this dedication to a very special person—known to many as Justice Beryl J. Levine, the first woman ever to sit on the North Dakota Supreme Court, and known to me as "Mom."

Justice Levine made tremendous accomplishments during her tenure on the bench. Certainly, her colleagues on the bench and her friends at the law school are more capable than I to discuss the impact her opinions and her presence on the Court have had, and will have on the law for generations to come. I leave the discussions regarding her influence, for example, on such topics as family law and constitutional law,

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1. Letter of Resignation by Justice Beryl J. Levine to Governor Edward Schafer (Jan. 2, 1996) (on file with author).

for the members of the judiciary and of the law school faculty. Instead, as one of her most ardent admirers who has collected articles written about her, has been mesmerized by her eloquent opinions, and has watched with intense pride as she left an indelibly positive mark on so many lives while she served the people of North Dakota, I offer my observations regarding the effect judiciary membership has had on Justice Levine, and on the extremely positive impact she has had on the legal profession both inside and outside of North Dakota's borders.

## II. THE ROAD TO THE BENCH

"But I refused to be defeated by the shadow of a bygone day."<sup>2</sup>

Many people are familiar with the beginning of Justice Levine's legal career and her 170 mile daily commute from her home in Fargo to law school at the University of North Dakota in Grand Forks, a trek she began after the birth of her five children.<sup>3</sup> But what may not be so well known is that even as a student, Justice Levine taught great lessons.

Indeed, I was only four years old when she began her journey along Interstate 29, and, at the risk of sounding slightly immodest, I was one of her first and most avid students. You see, she took me with her each semester for registration at the law school. And each day, after a day's worth of classes and another 170 miles under her belt, she came home and camped herself at the dining room table to study.

It was part of my childhood experience, therefore, to have a mom who, on the one hand, did her own thing, had her own work to do (just like Dad), and at the same time, I had no doubt—*ever*—that I had a mom who loved me, supported me, and was there for me. (Thank goodness for her incredible talent of being able to study with a house full of her own "students" constantly around her!) I am not sure how she balanced her life as a student with her life as a mother, but I am absolutely certain that she did it just as she lived her life as student, as attorney, and as justice—with hard work and to an impeccably high standard.

My earliest memories are of a mom who led a busy life that was different from my friends' moms. In fact, I cannot remember a time in my life when my mom was *not* a student, an attorney, a supreme court justice, or a retired supreme court justice. By including me in her

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2. THE QUOTABLE LAWYER 288 (David S. Schrager & Elizabeth Frost Eds., 1986) [hereinafter THE QUOTABLE LAWYER] (quoting SIR EDWARD CLARKE, THE STORY OF MY LIFE (1923)).

3. Susan Brauna Levine (May 8, 1956); Marc Joseph Levine (June 26, 1957); Sari Ruth Levine (November 8, 1959); William Noah Levine (July 21, 1964); David Karl Levine (December 28, 1966).

routine at the beginning of each semester, by being a presence in my life on a constant basis, and by doing so many things which I know influenced, taught, and nurtured me, Justice Levine taught me that although it may not yet be an equal world for men and for women, it should be.

I have always been proud of my mom, but I did not always know the obstacles and skepticism that often stood in her way. When she started law school back in 1971, I did not know then that the then-dean of the law school described her and her quest for a law degree as "bored, spoiled, and frivolous." Unfortunately, that was not the last sentiment she encountered of a not-so-bygone day, but she persevered, not for the dean, but for herself, to attain a status most women of her generation were not taught were attainable—independence and an identity separate from their husbands'. History now demonstrates the former dean's failure to recognize that Justice Levine would be immensely successful. As a writer, in a time before the dean, once recognized (albeit with an anachronistic use of pronouns):

"... no [wo]man is unsuccessful who has plenty to do. So long as one can honestly perform h[er] share of the world's work [s]he enjoys the only success it is possible for anybody to achieve."<sup>4</sup>

These words are particularly appropriate when considering Justice Levine's career, as she certainly has performed *at least* her share of the world's work, and in doing so, she has certainly been successful. What is so very special about her, though, is not just that she persevered and succeeded, but how she did it. She shudders at the label "superwoman," and she has gone to great lengths to explain that women do not need to be superwomen to succeed in the previously all male domain. To Justice Levine, it is clear that whatever success she has achieved, it has been a team effort. She is quick to point out that she received invaluable support from her husband (and this writer's father, Leonard Levine), besides mere economic support. Importantly, her husband provided vital moral support, encouraging her to try just one more week when she found herself feeling a tad overwhelmed, as well as providing a tremendous additional asset crucial to any law student's success—SILENCE. His countless trips lasting hours and hours to toy stores kept my brother and me out of the house so Mom could study, and did so in a way that never caused me to doubt that whatever else she was doing,

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4. THE QUOTABLE LAWYER, *supra* note 2, at 288 (quoting Joseph H. Choate in THERON G. STRONG, JOSEPH H. CHOATE (1917)).

student Beryl Levine was—equal with all of her other roles—my mom who was always available for me.

The Levine parents certainly have served as role models for the five Levine children, as evidenced by the fact that all five, like their parents, earned graduate degrees. The four oldest Levine children all began their college days with medical school as their ultimate goal. (Only the oldest wavered a bit, opting instead for an M.B.A.). I was a little different; because I was so proud of both of my parents, and because I truly wanted to be just like both of them, when I was a child and was asked what I wanted to be when I grew up, I always responded quite simply: "A doctor *and* a lawyer." Although I certainly am no less proud of my father than of my mother, I eventually chose the same goal my mother began to seek back in 1971, albeit I chose to do it on a shorter road with fewer distractions (that is with, no children).

The single event which I recall with absolute clarity which demonstrated to me, perhaps for the first time, the respect which attorneys can and do earn, and just how many lives Justice Levine had touched outside of our home during her auspicious career as an attorney, occurred when our telephone rang on January 16, 1985.

It is safe to say that on that day, Mom was expecting a call. We had two telephone lines at that time; although the telephone directory had one line listed under Dad's name and the other under Mom's name, the reality was that one line was Mom and Dad's, and one line was mine (as I was the last Levine child still living at home at the time). Although she was expecting a call that day from the Governor, she was expecting it on the "parents'" line. As a result, when "my" line rang, Mom allowed me to answer it. I am not sure if I have ever adequately thanked her for that privilege.

That call culminated weeks upon weeks of waiting and wondering for the entire family, ever since Mom threw her name into the proverbial hat to fill one of two vacancies on the North Dakota Supreme Court following the resignation of Justice Vernon Pederson and the death of Justice Paul Sand.<sup>5</sup> A day or two before this particular telephone call, Mom had completed her final interview with Governor Sinner. Mom had (and continues to have) such a deep respect for the Governor that she explained to me that even if he decided on another candidate, he would still have the grace and dignity to call her so that she would hear from him, rather than the press, that he had not named her to the Court. As a result, even though I immediately recognized the voice on the

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5. Tim Roby, *The Rumors Amuse the Justice*, FARGO F., Oct. 17, 1991, at A4.

telephone as Governor Sinner's, I was still left to wonder for a few minutes (which felt like months) whether she would be "hitting the road" again, this time to Bismarck.

I quickly handed the telephone to Mom, and of course, I did not even think about leaving the room to give her some privacy. Her first words to the Governor, unfortunately for me, gave me no indication about whether he had made the right decision. But then, she made a comment which not only instantly showed me that North Dakota had one smart Governor, it showed me that I had a mom who recognized and accepted the tremendous honor which the Governor had just bestowed upon her: "I thank you, Governor, and I plan to spend the rest of my career proving that you made the right decision." A few weeks later, she was, as she grew fond of saying, "on the road again," on her almost-weekly 400 mile round trip to Bismarck.

### III. THE JOURNEY ON THE BENCH

" . . . there never will be complete equality until women themselves help to make laws and elect lawmakers."<sup>6</sup>

Justice Levine rather reluctantly accepted whatever notoriety and fame came with the position of being the first female supreme court justice, but she gladly accepted the responsibility of her position. In fact, early in her tenure on the bench, she described how lucky she felt to be where she was, a feeling she had until the day she left the bench: "How many of us can say that we are doing precisely what we would have chosen in the most beautiful of all possible worlds. I didn't think I would ever be that lucky."<sup>7</sup>

It is not just the justice who feels lucky that she served on North Dakota's high court. A countless number of people, from practicing attorneys to sitting judges in North Dakota and other jurisdictions, to battered women, have all been the beneficiaries of her wisdom, insight, perseverance, and eloquence. Although she may be powerless to single-handedly eliminate discrimination and the beating of women by their husbands and male companions, Justice Levine has expended significant efforts to improve the system and its methods of dealing with

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6. THE QUOTABLE LAWYER, *supra* note 2, at 96 (quoting Susan B. Anthony, *The Status of Women, Past, Present and Future*, THE ARENA (May 1897)).

7. Randy Bradbury, *Beryl Levine N.D.'s 1st Female High Court Justice Revels in Her Job*, FARGO F., Sept. 15, 1985, at C1.

the plight of victimized women. Clearly her efforts have made a significant contribution.

From the very beginning, Justice Levine recognized the special position to which Governor Sinner appointed her, not just as the first woman justice, but as a justice, period. She was often asked what it felt like to be a supreme court justice, to which she succinctly and sincerely responded: "It's like being a student with status."

That short line exemplifies one of the special reasons why Justice Levine is such a wonderful individual, and why she made such a gifted, remarkable justice. Her description of the position demonstrates that although she certainly understood the power and prestige her position afforded her, those were not her favorite aspects of the position and certainly not her motivation. Rather, she relished her role's educational impact. She understood from the day she applied for the position that she would have the opportunity to teach others that whatever progress we as a society have made toward the goal of equality, we have not yet completed that journey. In addition, and perhaps most amazingly, Justice Levine truly viewed her position as one which allowed her to be a student herself, and she was genuinely excited about that aspect of her duties.

Time and time again, Justice Levine donated her time to various groups, accepting numerous invitations to speak at graduations, to women's groups, to civic groups, and to countless others on a formal and informal basis all across the state. She understood, as Susan B. Anthony said, that women must be part of the system and process if we are ever to achieve complete equality.<sup>8</sup> And she devoted much energy not only to personifying that message but to spreading it, too.

During her eleven years on the bench, Justice Levine, like all appellate judges, wrote hundreds and hundreds of opinions. A substantial number of her opinions were concurring and dissenting opinions. She wrote those opinions not because she had made a decision to be a consensus breaker. Rather, she felt a tremendous responsibility to author those opinions because through them, she would be able to educate a segment of the population about the inequality which currently exists and the work which needs to be accomplished to eliminate it. In that way, her concurring and dissenting opinions served the same purpose as did her countless speeches to students and women's groups. The main difference between these opinions and her speeches was the audience she was

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8. See *THE QUOTABLE LAWYER*, *supra* note 2, at 96 (quoting Susan B. Anthony, *The Status of Women, Past, Present and Future*, *THE ARENA* (May 1897)).

addressing. In her opinions, her audience/students were law students, practicing attorneys, trial court judges, future supreme court justices, and yes, even her current colleagues on the bench. It was the hope of influencing future outcomes which continued to motivate Justice Levine. Indeed, some of her work which is most powerful, eloquent, and which will have and has already had a tremendous impact on the law appears in her concurring and dissenting opinions.

Because of our "professional" bond, Justice Levine routinely forwarded her published opinions to me, her "California lawyer," and we often discussed them. Her persuasive, well-reasoned opinions demonstrate her command of the law and over the English language, as well as her commitment to the principles on which our system of jurisprudence is premised. Several of the opinions she forwarded to me exemplify why she is so special. A few bear comment here.

In *Swenson v. Northern Crop Insurance, Inc.*,<sup>9</sup> a case in which the court was addressing the issue of gender discrimination in the work place along with the tort of intentional infliction of emotional distress, Justice Levine concurred with the majority's reversal of the trial court's order granting summary judgment in favor of the employer.<sup>10</sup> She wrote specially to concur, however, because the majority suggested that with respect to the elements of a cause of action for intentional infliction of emotional distress, gender discrimination in the work place, without more, may not constitute sufficiently outrageous conduct, and she was unwilling to go that far.<sup>11</sup>

Justice Levine and I discussed the *Swenson* opinion numerous times, and she forwarded an advance copy of it to me, so I know first hand that she toiled with the opinion and felt very strongly about the importance of the lesson she would be conveying through her concurrence. In that concurrence, Justice Levine set forth a detailed discussion of the tort of intentional infliction of emotional distress.<sup>12</sup> But that was not the purpose of the opinion, because obviously, any competent attorney or judge could find and review that law. The real thrust of her opinion, the reason why she is proud of it, and one of the many reasons I respect and admire her, is because she educated her audience about gender discrimination, as is abundantly clear from the following excerpts:

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9. 498 N.W.2d 174 (N.D. 1993).

10. *Swenson v. Northern Crop Ins., Inc.*, 498 N.W.2d 174, 187 (N.D. 1993) (Levine, J., concurring specially).

11. *Id.*

12. *See id.* at 187-89.



Sex discrimination debases, devalues and despoils. When we cannot do anything to overcome another's criticism, hatred or contempt, we are, in effect, struck twice: first, by the act and, second and equally devastating, by the realization that we are helpless to undo that act, overcome it or change it. This is particularly true in a workplace. . . . As children, we learned that lightning does not strike twice. As adults, we must conclude that discrimination surely does. An employee, like Swenson, who is eliminated solely because of her sex is laid low, first by the irrational, discriminatory conduct and then, by the inability to do anything about it. Indeed, victims, like Swenson, often need reassurance that it is not their fault that employers have discriminated against them. . . . Discrimination is not a tale of hurt feelings, unkind behavior or inconsiderate conduct by one against another. . . . That it may insult is irrelevant; that it strips its victim of self-esteem, self-confidence and self-realization is the nub of its evil and the stuff of its outrageousness.<sup>13</sup>

Excerpts like these typify Justice Levine's contribution to the law and to the fight to eradicate inequality. Her command over the language provided her with an ability to communicate such an important message in a unique, memorable fashion to her various audiences. And, of course, it was not just how she said it that makes her special, but even more importantly, the substance of her message has marked her place in history.

I am fortunate to have been a member of her audience, and for me, it has been wonderfully educational; my learning began back in her law school days, and it has continued long past mine. She explained in plain, simple, and forceful terms, for example, the effects of discrimination; her description of the devastating impact discrimination had on the victim was something her male colleagues simply had not articulated before, and because of her perspective, she could articulate this message with added accuracy and credibility.

Although she obviously relied on established law as the authority for her decisions, she did not limit herself to case law when she did her *teaching* from behind the bench. She has taught us that the way to equality is not simply to ignore our personal experiences and differences. Indeed, one of the most treasured aspects of her message, in my

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13. *Id.* at 188 (citations omitted).

eyes, is the fact that she did not even pretend that her own gender was something which she should set aside as a display of feigned objectivity. In fact, thanks to Justice Levine, that is one of the most important lessons I have learned in my life—that in the fight to eliminate inequality in all of its ghastly forms, every individual's perspective is something which must be openly discussed around the table and not swept under it. The point is not simply that Justice Levine was as capable as the four male justices with whom she sat while she was a member of the court, and that she should have been a justice regardless of her gender.

Rather, the point is that women, African-Americans, Native Americans, Hispanics, and other members of classes who continue to be the victims of discrimination and bias have a unique perspective, so in the case of Justice Levine, her perspective as a woman does make her different, although certainly not less qualified than her male colleagues. She repeated this message throughout her tenure, including in her concurring opinion in *Swenson*:

As a subscriber to Oliver Wendell Holmes' belief that experience (not logic) fuels the engine of the law, and as a member of a class that has been subjected to sex discrimination, I find it difficult to understand how, at least, some members of the jury, whom we would all agree were reasonable members of their community, would not agree that sex discrimination, like race discrimination, goes beyond all bounds of decency and is truly atrocious and utterly intolerable in a civilized community.<sup>14</sup>

For me, and no doubt for many others, her concurring opinion in *Swenson* speaks volumes, not only about the quality of her accomplishments, but the manner in which she achieved them. Justice Levine is proud of her accomplishments, too, but not because of what they may mean for her, but rather, because of what they mean for women. Of course, there are many opinions which fit that description, some of which are of the concurring and dissenting variety, like *Swenson* and her dissenting opinion in *Schestler v. Schestler*.<sup>15</sup> As a result of opinions like those, we have already seen the tremendous role Justice Levine has had in excising some archaic notions, as some of her dissenting opinions have served as the basis for subsequent legislative action which undid some of the majority decisions to which she dissented.

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14. *Id.* (citations omitted).

15. *Schestler v. Schestler*, 486 N.W.2d 509, 513 (N.D. 1992) (Levine, J., dissenting).

However, Justice Levine's contributions are not limited to the messages she put forth in her non-majority opinions. One in particular stands out in my mind, and it is one I know she is especially proud of, too. In *City of Mandan v. Fern*,<sup>16</sup> Justice Levine wrote for the majority in concluding that "gender-based peremptory challenges violate the equal protection clause of the fourteenth amendment."<sup>17</sup> Immediately after the opinion was published, she forwarded a copy of it to me with a note: "Here is an opinion I am very proud of. So I share it with you." She is proud of the opinion because of what it means for women and the struggle for equal protection under the law. I am proud of it for that reason, too, but also for less noble reasons: because it shows what a remarkable jurist she is, and because she preordained a subsequent holding by the United States Supreme Court on the very issue.<sup>18</sup>

The justice has never forgotten, from the first day in her chambers to this very day, that although she may have cleared what she would likely describe as only a few trails for the women who have followed and who will follow her, she was the beneficiary of the trail-blazing of some special women who preceded her. She recognized three of those women when she accepted the 1996 Margaret Brent Women Lawyers of Achievement Award.<sup>19</sup> She spoke eloquently about the impact of, and the debt of gratitude she owes to Helen Hamilton, Ella Van Burckham, and her good friend, Professor Marcia O'Kelly of the University of North Dakota School of Law who, as the justice put it, "taught me as a freshman law student, . . . as a family law practitioner, and . . . as a supreme court justice."<sup>20</sup>

As is quite obvious, this writer is extremely proud of Justice Levine, too. I have known her for quite some time now, and one of her many remarkable qualities that strikes me most is her unassuming, inspiring manner. She is most appreciative of the accolades, but she never gets

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16. 501 N.W.2d 739 (N.D. 1993).

17. *City of Mandan v. Fern*, 501 N.W.2d 739, 747 (N.D. 1993).

18. *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127 (1994) (holding it a violation of the Equal Protection Clause to discriminate on the basis of gender in the use of peremptory challenges).

19. See Program, Sixth Annual Margaret Brent Women Lawyers of Achievement Awards Luncheon, ABA Annual Meeting, Orlando, Fla. (Aug. 4, 1996) (on file with the author) (providing:

Margaret Brent was the first woman lawyer in America. She arrived in the Colonies in 1638. She was involved in one hundred and twenty-four court cases in eight years. In 1648, she formally demanded a 'vote and voyce' in the Maryland Assembly which the Governor denied. Over 250 years later Harper's magazine noted: "By this action, Margaret Brent undoubtedly placed herself as the first woman in America to make a stand for the rights of her sex.").

20. Justice Levine's remarks upon accepting the 1996 Margaret Brent Women Lawyers of Achievement Award, Sixth Annual Margaret Brent Women Lawyers of Achievement Awards Luncheon, ABA Annual Meeting, Orlando, Fla. (Aug. 4, 1996).

caught up in them, and certainly does not do what she does simply to receive them. She is quick to share the credit for her accomplishments with those who have come before her and with those from whom she has borrowed. She has been a student of the United States Supreme Court for longer than I know, and she has admired, cited to, and borrowed from several of that court's members. Because she is particularly fond of the works of the late Justice Thurgood Marshall, I thought it appropriate to include a sentiment uttered by him which is especially descriptive of one of Justice Levine's many important contributions to the legal profession.

Justice Marshall once said, rather poignantly: "We must never forget that the only real source of power that we as judges can tap is the respect of the people."<sup>21</sup> Justice Marshall's sentiments are particularly important to the legal profession in the 1990s, a time when our public image, like forgotten silver, is quite tarnished, and some in our profession seem determined to leave it that way. Justice Levine has taken Justice Marshall's words to heart—both in the way she has conducted herself as a member of the Bar and in the message she sought to spread from the bench. In both capacities, she demonstrated by supreme example that for all members of our profession, no matter what other goals for which we may be striving, those goals can and should always include polishing our image. The sentiments and gestures of numerous individuals and groups, including the Women Lawyers Section of the North Dakota Bar Association, the ABA, Governor Sinner, Governor Schafer, Chief Justice Gerald VandeWalle, Justice Ruth Bader Ginsburg, the *North Dakota Law Review*, and all of the individuals who have contributed to the *Law Review's* gracious dedication to Justice Levine are special examples of the respect she earned. She, like Justice Marshall, clearly recognized the importance of earning and keeping the respect not just of peers, but of the people.

An example of her commitment to her position as a justice and of her ability to use the power of the position not to further herself on a personal level but rather to effect change in a positive way, Justice Levine wrote specially in *Vitko v. Vitko*,<sup>22</sup> to remind us all that we, as lawyers and as judges, must conduct ourselves with respect and dignity.<sup>23</sup> She explained that if we look the other way when one of us acts in such a

21. THE QUOTABLE LAWYER, *supra* note 2, at 149-50 (quoting Thurgood Marshall, CHI. TRIB., Aug. 15, 1981).

22. 524 N.W.2d 102 (N.D. 1994).

23. *Vitko v. Vitko*, 524 N.W.2d 102, 105 (N.D. 1994) (Levine, J., concurring).

way which compromises the integrity of our system of justice, then we have committed a sin just as the original transgressor did.<sup>24</sup> She took the time to explain that an attorney's use of inappropriate comments and behavior, including "racist epithets and obstreperous expressions of anger and disdain," has no place in a court of law:

I concur in the majority opinion, but write specially to emphasize a lawyer's ethical duty to conduct himself temperately and to respect the rights of others to unbiased, fair treatment.

...

... When an attorney engages in sexist or racist conduct, the public trust is violated and the attorney's ability to serve clients warrants careful consideration. Gender-bias and racism interfere with the administration of justice and impugn the integrity of the judiciary.

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It is not only a lawyer who has a duty to avoid sexist or racist remarks. A judge, too, has a duty to "require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, [or] sex . . . against parties, witnesses, counsel or others." Although the boundaries of professional conduct allow wide latitude for lawyers to be advocates and to zealously promote their clients' cause, these boundaries do not countenance gender-biased or racist expression. A judge should be vigilant in maintaining the integrity of the judicial system by putting a stop to an attorney's misconduct in a manner that lets the attorney know the remarks or conduct, or both, will not be tolerated. . . .

As the Preamble to our Rules of Professional Conduct makes clear, lawyers are the linchpin of our system of justice. They play "a vital role in the preservation of society." To fulfill that role, lawyers must understand "their relationship to our legal system." The Rules of Professional Conduct "define that relationship" and demand of attorneys faithful compliance. There is no room in our courtrooms for sexism or racism and lawyers and judges should make clear their hostility to any such manifestations.<sup>25</sup>

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24. *Id.*

25. *Id.* at 105-06 (citations omitted).

To Justice Levine, this message is important not simply because this particular attorney's atrocious behavior and the judge's willingness to ignore it make the profession "look bad;" much more significantly, she believes that we must conduct ourselves with tremendous dignity in the judicial system so that we maintain the integrity of the system. In so doing, we will maintain the public's confidence both in the system and in our ability to participate in it.

Justice Levine clearly has gained the respect of those in her profession, male and female. The Women Lawyers Section of the North Dakota Bar Association nominated her not once, but twice for the Margaret Brent Women Lawyers of Achievement Award, the highest award given to women in the law by the American Bar Association. The nominating materials encapsulate her remarkable contributions and the high regard many, many people have for her:

Justice Levine has reshaped family law in North Dakota. Coming into a court system that often seemed to overlook the bonding role of the primary care giver while weighing other factors relevant to parenting, she showed the judiciary and the practicing bar how to recognize and protect psychological continuity for children caught up in custody disputes. Facing a persistent insensitivity to the hurt inflicted on the entire family by domestic violence, she worked tirelessly to teach, persuade, and insist that a presumption against awarding custody to perpetrators of domestic violence can only be overcome by clear and convincing evidence the violent parent has "unlearned" that pattern of destructive conduct.

Justice Levine's decisions have established the level for rehabilitative or permanent spousal support to be commensurate with the standard of living established during the marriage or with a fairly divided reduction of that standard. The concept and consequences of marriage as an equal and shared enterprise that Justice Levine brought to the North Dakota Supreme Court led one scholar to describe North Dakota family law doctrinal developments as a "clear ray of hope." . . .

During a time when constitutional claims often conflict, Justice Levine has eloquently affirmed constitutional principle in prescient first amendment and equal protection opinions that expose and explain the reality of gender bias in employment, family law, and jury selection. Realizing the damage inflicted

by gender bias in the legal system, she fought for assessment of the need for a study of gender fairness in North Dakota state courts. Although the assessment was one of the earliest in the nation, its recommendation was frustrated by a cutback of public funding. Justice Levine's commitment to the need for a study of gender fairness in North Dakota state courts kept the issue alive for the seven years it took to make the study a reality.<sup>26</sup>

Several people wrote to the American Bar Association to encourage the ABA to select Justice Levine as a 1996 recipient of the Margaret Brent Award. Those people included the executive director of The North Dakota Council on Abused Women's Services—Coalition Against Sexual Assault in North Dakota, one of her former partners during her days as a practicing attorney, the chairperson of the Joint Task Force on Family Law, and the woman who served as co-chairperson with Justice Levine on the North Dakota Supreme Court's Commission on Gender Fairness in the Courts, a commission Justice Levine worked diligently to establish. Each of those individuals authored obviously heart-felt letters of support for the nomination. There was one other letter of support which bears special mention.

During Justice Levine's tenure on the bench, the author of this letter and she developed a mutual respect for each other, and although they may not always have signed the same opinions, they truly learned from each other. The writer of that letter is current Chief Justice Gerald VandeWalle who has been a respected member of the court since 1978. As the following excerpt illustrates, I am not alone in my respect for and pride in Justice Levine. The Chief Justice spoke from the unique perspective of friend and then-current colleague in his unqualified support for her nomination for the Margaret Brent Award:

Justice Levine is the first woman to serve on the North Dakota Supreme Court. The excellence in quality and significance of her opinions, in both thought and expression, are immediately evident to the reader. Her place in the history of the Court is secure not only because she is the first woman to serve, but also because of the merit of her work.

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26. Nomination Statement submitted to the American Bar Association by the Women Lawyers Section of the North Dakota Bar Association, nominating Justice Levine for the 1996 Margaret Brent Women Lawyers of Achievement Award [hereinafter Nomination Statement] (citation omitted).

As the first woman on the North Dakota Supreme Court, it is apparent Justice Levine feels a great sense of responsibility to lead by example and by action so that entrance to and advancement in our profession is easier for those women who follow. She encourages and counsels not only women contemplating a legal career, but also those in our profession who seek public positions or entry into or advancement in law firms. She takes every opportunity to further the cause of women, at times at great personal sacrifice.

...

North Dakota has had the benefit of other outstanding women lawyers. They were and are well respected and splendid examples for those women who are interested in a legal career. However, I can think of no other woman lawyer who has been as active in promoting North Dakota women in the profession as Justice Levine. When I saw the award criteria, I thought they had been written to fit Beryl Levine.

Although Beryl is a good friend, this letter is written not out of friendship, but out of my awe and admiration for Beryl's leadership in bringing women to an equal position in our profession. She has empowered not only other women to that cause, she has energized all of us, colleagues and others, to be active participants in the advancement for women as lawyers.

I am delighted Beryl Levine was nominated for the Margaret Brent Women Lawyers of Achievement Award. I support that nomination enthusiastically and without reserve.<sup>27</sup>

Chief Justice VandeWalle's eloquent words in support of Justice Levine's nomination speak for themselves. He was right on about the award criteria—those criteria and Justice Levine are a perfect match, as each of the criteria aptly describes Justice Levine and her career: "Achieved professional excellence in their field; and . . . influenced other women to pursue legal careers; or . . . opened doors for women lawyers in a variety of job settings that historically were closed to them; or . . . advanced opportunities for women within a practice area or segment of the profession."<sup>28</sup>

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27. Letter from Chief Justice Gerald W. VandeWalle, to the American Bar Association Commission on Women in the Profession (Feb. 8, 1996) *in* Nomination Statement, *supra* note 26.

28. Program, Sixth Annual Margaret Brent Women Lawyers of Achievement Awards Luncheon, ABA Annual Meeting, Orlando, Fla. (Aug. 4, 1996) (on file with author).



People often speak of imitation as a form of flattery. It certainly is in the case of Justice Levine and United States Supreme Court Justice Ruth Bader Ginsburg. The two justices established a judicial friendship several years ago at a judicial conference. They have communicated with each other since then, including a very recent correspondence when, after Justice Levine's departure from the court, Justice Ginsburg forwarded an advance copy of the United States Supreme Court's opinion in *United States v. Virginia*.<sup>29</sup> In that case, the Supreme Court, with Justice Ginsburg writing for the majority, held that the State of Virginia's categorical exclusion of women from the Virginia Military Institute (VMI) denied equal protection to women.<sup>30</sup>

With the advance copy of her opinion which she forwarded to Justice Levine, Justice Ginsburg included a brief note, instructing Justice Levine to "turn immediately" to footnote 20 of the opinion. Justice Levine was humbly flattered to learn that in that footnote, Justice Ginsburg quoted Justice Levine.<sup>31</sup> Things have really come full circle for Justice Levine; in her many speeches and multitude of opinions, she complemented her own eloquence by borrowing from others' words and experiences. She is fond of referring to the irony of the ancient Republic, the antithesis of an egalitarian society, yet in at least one important sense, that undemocratic society was light years ahead of its time. Now, Justice Ginsburg borrowed Justice Levine's reference to Plato and his wrestlers to help make her point about gender equality:

. . . Compare *In re Lavinia Goodell*, 39 Wis. 232, 246 (1875) (denying female applicant's motion for admission to the bar of its court, Wisconsin Supreme Court explained: "Discussions are habitually necessary in courts of justice, which are unfit for female ears. The habitual presence of women at these would tend to relax the public sense of decency and propriety.") with Levine, Closing Comments, 6 Law & Inequality 41, 41 (1988) (presentation at Eighth Circuit Judicial Conference, Colorado Springs, Colorado, July 17, 1987) (footnotes omitted): "Plato questioned whether women should be afforded equal opportunity to become guardians, those elite Rulers of Platonic society. Ironically, in that most undemocratic system of government, the Republic, women's native ability to serve as guardians was not seriously questioned. The concern was over

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29. 116 S. Ct. 2264 (1996).

30. *United States v. Virginia*, 116 S. Ct. 2264, 2287 (1996).

31. See *id.* at 2286 n.20.

the wrestling and exercise class in which all candidates for guardianship had to participate, for rigorous physical and mental training were prerequisites to attain the exalted status of guardian. And in accord with Greek custom, those exercise classes were conducted in the nude. Plato concluded that their virtue would clothe the women's nakedness and that Platonic society would not thereby be deprived of the talent of qualified citizens for reasons of mere gender."<sup>32</sup>

The respect and admiration people of all likes hold for Justice Levine is truly something for me, her son and professional colleague, to behold. Chief Justice VandeWalle and Justice Ginsburg are but two examples of people who recognized the intellect, ability, and contributions which make her so special. Although those two justices may be two of the more influential, powerful people who are Justice Levine's admirers, they certainly are not exclusive members of that club.

The extent of the positive impact she has had on people across the state of North Dakota and beyond will perhaps not be known for many years, but it is clear that during her career as a justice, she touched many lives. She touched the lives of those who were directly affected by her efforts as well as those who were interested bystanders. A 1991 *Fargo Forum* article illustrates the high regard with which she is held. That article discussed (premature) rumors about her departure from the court. After dispelling those rumors, the writer concluded with a sentiment shared by many: "Fortunately for all North Dakotans, Justice Levine will continue to occupy her familiar seat at the left end of the bench and continue to impress us with her dignity and intellect."<sup>33</sup> The *Forum* is obviously an insightful publication with well-informed writers, as further evidenced by the following excerpt which appeared after she announced her resignation and which is particularly meaningful both to Justice Levine and to this writer:

When Justice Beryl Levine leaves North Dakota's Supreme Court in a few weeks, the court will lose one of its most capable members.

Levine is the first woman to serve on the high court, an important milestone. But more important has been the energy and intellect she brought to the bench. Her work has been distinguished by sensitivity to the impact of the court's decisions

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32. *Id.*

33. Roby, *supra* note 5, at A4.

on people—an understanding that the judiciary does not operate in a vacuum.

...

She intends to spend more time with her family and go on to other challenges in a new home in northern California. We wish her well, but we also wish she'd stay.<sup>34</sup>

Justice Levine also earned the respect of at least two North Dakota governors—the one who appointed her and the one who appointed her successor. Governor Sinner no doubt respects her not just because he will forever be known as the Governor who appointed the first woman to the North Dakota high court, but because he appointed a *person* who turned out to be one of the most gifted justices, male or female. Upon learning of her resignation, former Governor George Sinner wrote to her to express his appreciation for Justice Levine's devotion and hard work, and he described her accomplishments simply and aptly as "smashing."<sup>35</sup> Governor Edward Schafer similarly recognized her "hard work and dedication," and he added that she "served with distinction and . . . earned the respect of the bar and the citizens of North Dakota alike."<sup>36</sup> Based on Justice Marshall's measure of the power of a judge, it is clear that as a justice, and as a person, Justice Levine is one of the most powerful justices ever to grace this country's benches.

#### IV. CONCLUSION

From the beginning of her tenure on the bench to this very day, Justice Levine has placed much of the credit for her ascendancy to the judiciary on, as she reiterated when she accepted the 1996 Margaret Brent Award, "so many fortuities, mere accidents of birth."<sup>37</sup> Although I do not know of too many instances when I would voice disagreement with my mother, it is abundantly obvious that there is more to Justice Levine and her success and contributions than mere luck and happenstance.

In each of her capacities in my life—as my mother, my friend, and my colleague—I have the utmost respect for her, and in each of those capacities, she is my role model and mentor. As her child, I know with-

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34. *Levine Brought Insight, Intellect to High Court*, FARGO F., Jan. 5, 1996, at A4.

35. Letter from Governor George Sinner to Justice Beryl Levine (Jan. 8, 1996) (on file with author).

36. Letter from Governor Edward Schafer to Justice Beryl Levine (Jan. 5, 1996) (on file with author).

37. Justice Levine's remarks upon accepting the 1996 Margaret Brent Women Lawyers of Achievement Award, Sixth Annual Margaret Brent Women Lawyers of Achievement Awards Luncheon, ABA Annual Meeting, Orlando, Fla. (Aug. 4, 1996).

out a doubt that I have the greatest mother any child could ever hope to have. She has taught me that the relationship between parent and child is only enriched when taken to the next level—that of friendship. As a woman in a previously all-male domain, she has taught me that men as well as women have much to gain by striving, together, for equality. Indeed, because of Justice Levine, I am proud to call myself a feminist. She has demonstrated to us all that, on the one hand, women must maintain their own identity, as they are different from men in so many ways, and at the same time, women and men are equally competent to perform and must work together.

Finally, as her professional colleague, I am proud of her accomplishments, not just because she is my mother, but also, because of her work, I am proud to be an attorney. She has taught us all that ours is a profession worthy of dignity and respect, but we the participants in and users of our system of jurisprudence, a system which has withstood the test of time—must be steadfast in our devotion to it. After all, the system has been around much longer than we have, and it will continue to survive; we are nothing more than the current users and guardians of the system for future participants. Quite simply, we must continually strive to operate at the same high standards of excellence, dignity, and integrity which are the trademarks of Justice Levine's illustrious career.

Despite her intellect, talent, and accomplishments, Justice Levine never once lost sight of her goal of achieving equality, and she never thought of herself as more important than the struggle. We know that because of her, the struggle has become easier, the goal is closer, and the lives of those whom she has touched and continues to touch are enriched. Justice Levine's career is proof that women have "come a long way, baby" since a not too distant time when the sight of women like Beryl J. Levine donning the robes of a justice of the supreme court were, at best, an unattainable dream.

I close with the words of a woman who, like Ella Van Burkhams, Helen Hamilton, Marcia O'Kelly, and Beryl J. Levine, paved the way for other women to continue the struggle. Clearly, Ms. Stanton, too, would have been proud of the accomplishments and contributions of Justice Levine, who is without a doubt, a "true woman": "Thus far women have been the mere echoes of men. Our laws and constitutions, our creeds and codes, and the customs of social life are all of masculine origin. The true woman is as yet a dream of the future."<sup>38</sup>

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38. Elizabeth Cady Stanton, Speech at the International Council of Women (1888).

